

IN THE UNITED STATES DISTRICT COURT FOR
THE WESTERN DISTRICT OF OKLAHOMA

FILED

OCT 12 2010

MIKE WATKINS et al.,)
Petitioners,)
vs.)
JUSTIN JONES, Director, et al.,)
Respondents.)
No. CIV-10-893-W

ROBERT D. DENNIS, CLERK
U.S. DIST. COURT, WESTERN DIST. OF OKLA.
BY rwd DEPUTY

ORDER

In a petition file-stamped July 26, 2010, nine (9) individuals¹ brought suit in the District Court for Payne County, Oklahoma, against Justin Jones, Director, Oklahoma Department of Corrections ("DOC"), Robert L. Hudson, District Attorney for Payne County, Oklahoma, and H.B. Hauf, Sheriff of Payne County, Oklahoma. The petitioners alleged in their pleading that they were incarcerated in the Payne County Jail, despite the fact they had been sentenced to terms of imprisonment in the custody of the DOC, and that, due to overcrowding in state correctional facilities, the DOC had failed to transport them from the Payne County Jail to a state correctional facility. They complained in particular that the DOC's failure to transport them to a state correctional institution had denied them the opportunity "to receive the benefit of gaining levels, receiving programs, or enhanced credits," Doc. 1-3, as well as denied them *inter alia*

¹Identified in the style as plaintiffs are Mike Watkins, Stanley Linzy, Jeremiah T. Smith, Chadwick J. Neal, Frank Ramos, Jr., Elijah K. Shadowen, Allen Tompkins, Jr., Jimmy Fulton and Daniel Roberts. On page 6 of the petition, twelve (12) additional names are listed: Carl Estes, Ralph Matlock, Jr., Anthony W. Endrina, Jasper M. Lockett, Ricky L. Flowers, Craig S. Dunlap, Henry Smith, Kevin Blacksher, Dustin Watkins, Steve Myers, Blake Crawford and Hoang Ly. Pages 20 and 21 of the petition bear the signatures of ten (10) individuals: Ramos, Shadowen, Roberts, Linzy, M. Watkins, Matlock, Tompkins, Neal, Fulton and J. Smith.

access to DOC case managers, access to a law library and legal documentation to perfect appeals, file motions, and research legal materials as it relate[d] to their individual cases, [and] access to medical care as it relate[d] to chronic care or the availability of seeing a physician for other health related issues.

Id.

The petitioners sought to be transported within a reasonable time, or in the alternative, that Payne County Jail be ordered to provide them the same benefits to which they would be entitled in a state correctional facility; the petitioners did not seek monetary relief.

Hauf removed the case on August 17, 2010, see Doc. 1, and the matter was referred to United States Magistrate Judge Gary M. Purcell for preliminary review. On August 20, 2010, Hauf filed a Motion to Dismiss, and on August 24, 2010, Magistrate Judge Purcell issued a Report and Recommendation.

In the Report and Recommendation, Magistrate Judge Purcell recommended that the matter be dismissed, whether it be construed as an action brought by individuals challenging the execution their sentences under title 28, section 2241 of the United States Code or as an action brought by individuals seeking declaratory relief under title 42, section 1983 of the United States Code. The petitioners were advised of their right to object to the Report and Recommendation, but no objections have been filed within the allotted time.²

²The Clerk of the Court mailed Magistrate Judge Purcell's Report and Recommendation to the address listed by petitioner Mike Watkins in the petition. See Rule 5.4(a), Rules of the United States District Court for the Western District of Oklahoma (papers sent to last known address deemed delivered). The document was returned to the Clerk by the United States Postal Service with the following notations on the envelope: "Return to Sender - Attempted - Not Known - Unable to Forward." See Doc. 10.

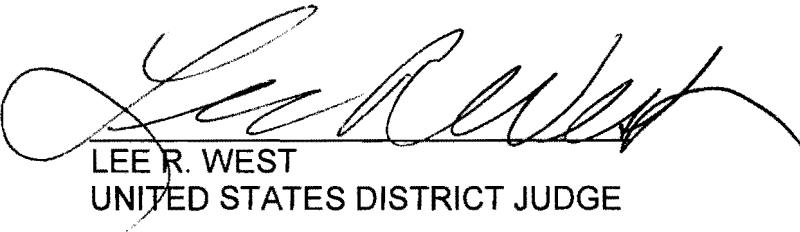
Rule 5.4(a), supra, requires pro se litigants to provide the Court with a mailing address and to file with the Clerk notice of any change of address. Watkins has not complied with this rule.

Upon review of the record, the Court concurs with Magistrate Judge Purcell's suggested disposition of this matter as set forth in his thorough and well-reasoned Report and Recommendation.

Accordingly, the Court

- (1) ADOPTS the Report and Recommendation [Doc. 6] issued on August 24, 2010;
- (2) DISMISSES this matter without prejudice;
- (3) DENIES as MOOT Hauf's Motion to Dismiss [Doc. 5] filed on August 20, 2010;
- (4) DENIES as MOOT the Motion for Subpoenas for Medical Records and Official Documents [Doc. 7] filed on August 26, 2010, by petitioner Chadwick J. Neal;³ and
- (5) DENIES Neal's Motion for Legal Counsel, Legal Materials and/or Access to a Law Library [Doc. 8] filed on August 26, 2010.⁴

ENTERED this 12th day of October, 2010.



LEE R. WEST
UNITED STATES DISTRICT JUDGE

³Each petitioner has the right to appear on his own behalf; he may not however represent another pro se plaintiff in federal court. E.g., 28 U.S.C. § 1654. Accordingly, the Court has considered the motions as filed only by Chadwick.

⁴See id.